

- (m) Priority of Provisions. The specific language any attached addenda, exhibits, schedules, or other documents takes precedence over the language in this Master Services Agreement, unless specifically stated otherwise in those attachments.
- (n) Captions. Paragraph captions and articles are solely for convenience or reference and shall not affect the construction or interpretation of this Agreement.

IN WITNESS WHEREOF, the Parties have signed this Agreement in duplicate on the Effective Date.

McLeodUSA Telecommunications  
Services, Inc.

By [Signature]  
Name PRO FRAZMAN  
Title Dir. Corin Sales  
Date 11/14/03

Unipoint Services, Inc.

By [Signature]  
Name ALAN KAPLAN  
Title President  
Date 11/7/03

[Signature]

# McLeodUSA<sup>®</sup>

## ADDENDUM No.1 For ISDN Primary Rate Interface (PRI)

*Confidential and Proprietary*

This Addendum No. 1 ("Addendum") is attached to and is specifically made a part of the Agreement dated November 5, 2003 between the Parties indicated by the signatures below. With the exception of the Effective Date, the defined terms in the Agreement remain the same for the Addendum. This Addendum is effective November 5, 2003 ("Effective Date"). The Addendum describes the Services, the terms of the Addendum, the prices for the Services, Service Descriptions, service level commitments and any other Customer or Service-specific terms and conditions.

### 1. Service Description:

The McLeodUSA ISDN Primary Rate Interface ("PRI") Service is the provision by McLeodUSA to Customer of one or more T1's (set forth in Exhibit A, attached hereto) to provide transport of ISDN trunking from the McLeodUSA switch to Customer's premise. Such PRI connects to the compatible trunk side of a Class 5 switch.

PRI may be provided in any of the following configurations:

- 23B (or bearer) channels + 1D (or signaling) channel: Standard Configuration
- 24B\*
- 23B + D Back-up\*

\*The 24B and 23B + D Back-up are secondary facilities and require a primary, 23B + 1D facility.

2. Service Term. The term of the Services is for 1 year from the Effective Date of the attached Exhibit B or any subsequent Exhibit B-x. If the Agreement expires prior to the expiration of this Addendum or any Exhibits, Customer agrees that all terms and conditions of the Agreement will remain effective until expiration of the Addendum or Exhibits. This Addendum shall automatically be renewed for additional successive one (1) month terms unless one party delivers written notice to the other party of an intent not to renew this Addendum at least thirty-(30) days before the end of the initial term or any renewal term.

3. Service Prices. The Customer shall pay the following charges:

- (a) Ancillary charges and installation charges for Services ordered by Customer in Exhibit A;
- (b) Monthly Recurring Charge as stated in Exhibit A; and
- (c) Any federal, state or local taxes, surcharges or other liabilities, chargeable to or against McLeodUSA because of the Services provided to Customer.

### 4. Other Services/Customer Specific Terms and Conditions.

#### (a) Credit for Service Failure.

(i) The duration of a Service Failure shall be from (1) the time of notice by Customer to McLeodUSA that a Service Failure has occurred to (2) the time of restoration or correction, subject to McLeodUSA's receipt of evidence reasonably acceptable to McLeodUSA, normally the recording of a trouble ticket, evidencing such Service Failure.

(ii) No Service Failure shall be deemed to occur during any period during which Customer fails to afford access to any facilities for the purpose of investigating and clearing troubles.

(iii) In the event of a Service Failure under this Addendum, Customer may request a billing adjustment as provided in Section 4(e) of the Agreement. The availability and the amount of any billing adjustment shall be mutually determined between McLeodUSA and Customer. However, in no event shall any such billing adjustment exceed the amount (based on the charge per minute or fraction thereof) actually charged by McLeodUSA to Customer for the communication affected by such Service Failure.

(b) Cancellation. Customer may cancel this Addendum or any attached Exhibit for cause as described in Section 13 of the Agreement if (1) the service requested in Addendum Exhibit(s) does not become first



# McLeodUSA

available on or before the ninetieth (90<sup>th</sup>) day following a Requested Service Date found on the applicable Exhibits, or (2) McLeodUSA fails to cure any Service Failure within thirty (30) days notice of its existence, as demonstrated by the date on the applicable trouble ticket.

## (c) Routed Traffic.

Customer agrees that all traffic routed to McLeodUSA over the facilities which are the subject of this agreement will be traffic to which neither interstate nor intrastate access charges apply, according to the regulations of the FOC and the state PUC in the state to which the traffic will terminate. Customer agrees to periodically perform such traffic studies as are necessary to confirm this fact, and to immediately inform McLeodUSA if those studies do not confirm the fact.

Customer agrees not to strip, change, or in any way manipulate the number of the calling party associated with each individual call, and to maintain call records showing the originating numbers for each call, to the extent those originating numbers are passed to Customer with the call.

McLeodUSA will use commercially reasonable efforts to challenge any attempt by a Local Exchange Carrier ("LEC") to assess access charges on Customer's traffic provided that Customer's traffic is not subject to either interstate or intrastate access charges, according to the regulations of the FOC and the state PUC in the state to which the traffic will terminate.

In the event that any regulatory body or court of competent jurisdiction finds that either interstate or intrastate access charges should apply to the traffic passed by Customer to McLeodUSA (a "Legal Change"), Customer in its sole discretion may terminate services immediately without penalty or further obligation to continue to do business under the Agreement or this Addendum. Customer agrees to indemnify and hold McLeodUSA harmless from all costs, including any attorneys fees, associated with such access charge determinations and payments after a legal change. In the event that Customer elects to continue to receive services from McLeodUSA under the Agreement or this Addendum subsequent to the effective date of any Legal Change, McLeodUSA shall have the right to modify, on sixty days' notice, the prices it charges Customer by an amount not to exceed a dollar-for-dollar pass through of the additional costs incurred by McLeodUSA directly attributable to the Legal Change. In addition, in the event of a legal change, McLeodUSA may in its sole discretion re-rate and backbill Customer to the effective date of the application of access charges to Customer's traffic if lawfully ordered by a court or agency with competent jurisdiction.

## 5. Exhibits.

Exhibit A Pricing  
Exhibit B-a Service Order Form

IN WITNESS WHEREOF, the Parties have signed this Addendum in duplicate on the Effective Date.

McLeodUSA Telecommunications Services, Inc.

By Greg Hagerman  
Name Greg Hagerman  
Title Dir. Carrier Sales

Customer

By [Signature]  
Name Mike Hickey  
Title President

# **EXHIBIT J**

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IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

IN RE:	)	
	)	BK. NO.: 05-31929-WDM-11
TRANSCOM ENHANCED	)	
SERVICES, LLC	)	
	)	
DEBTOR	)	

\*\*\*\*\*

TRANSCRIPT OF PROCEEDINGS

\*\*\*\*\*

COPY

BE IT REMEMBERED, that on the 29th day of March, 2005,  
before the HONORABLE HARLIN D. HALE, United States Bankruptcy  
Judge at Dallas, Texas, the above-styled and numbered cause  
came on for hearing, and the following constitutes the  
transcript of such proceedings as hereinafter set forth:

1 MR. STRETCH: Your Honor, to the extent  
2 their motion depends on contacts from SBC to Transcom  
3 customers, I'll just note that there's been absolutely  
4 no factual basis underlying that showing. So we would  
5 oppose that request on that basis.

6 With that said, I'm happy to proceed at  
7 this point based on the type of customers.

8 THE COURT: Categories or types? Okay.  
9 All right. I'll sustain the objection for the record,  
10 and you can proceed.

11 Q. (By Mr. Stretch) Your largest customers, can  
12 you describe the type of carrier they are?

13 A. They're -- IXC carriers are our largest  
14 customers.

15 THE COURT: I'm sorry, Mr. Birdwell. I  
16 just didn't hear what you said.

17 THE WITNESS: IXC, Inter Exchange Carriers.

18 THE COURT: Thank you.

19 Q. (By Mr. Stretch) And when you say inter  
20 exchange carriers, and I'm not talking about specific  
21 identify, but you're talking about companies that  
22 provide long distance service on a detail basis?

23 A. Well, I would assume that among other things  
24 that they do, that, yes, they do that.

25 Q. Okay. But you -- you described them as an

1 inter exchange carrier, and is my description of an  
2 inter exchange carrier accurate?

3 A. Give me your description of -- to be honest  
4 with you, I don't know the definition -- the correct  
5 definition of an inter exchange carrier.

6 Q. Okay. Well, I'm -- I'm using your term, but my  
7 understanding of that term is that it refers to  
8 companies that provide long distance telephone services  
9 to customers on a retail basis.

10 A. Okay.

11 Q. Is that -- is that consistent with your  
12 understanding?

13 A. Among other things they do, yes.

14 Q. Okay. So if I just take off a couple of  
15 carriers, can you tell me whether in your understanding  
16 they are inter exchange carriers without conceding that  
17 they're a customer?

18 A. Well, I think that to the extent that I know  
19 for a fact that they're inter exchange carriers, yes.

20 Q. Okay. Do you consider AT&T to be an inter  
21 exchange carrier?

22 A. It would be my understanding that, yes, they  
23 are.

24 Q. Okay. What about MCI?

25 A. Yes.

1 Q. What about Sprint?

2 A. Yes. As well as a local exchange carrier in  
3 Sprint's case.

4 Q. Correct. And --

5 A. It's the same on AT&T.

6 Q. Correct. I -- okay. So AT&T in its capacity  
7 is a long distance carrier. MCI in its capacity is a  
8 long distance carrier. Sprint in its capacity is a  
9 long distance carrier. Those are the types of  
10 companies that you would consider to be long  
11 distance --

12 A. Yes, those are.

13 Q. -- inter exchange carriers?

14 A. Yes.

15 Q. Okay. And the majority of your traffic --  
16 well, let me rephrase that. How much of Transcom's  
17 traffic comes from inter exchange carriers?

18 A. I don't know the exact answer to that question.

19 Q. Do you know the approximate answer to that?

20 A. Probably 50 percent. Somewhere in that  
21 neighborhood or less.

22 Q. Okay. Have you taken any steps to determine  
23 precisely how much of your traffic is -- comes from  
24 inter exchange carriers of the sort I've described?

25 A. No.



1 Q. You have not? Could you take such steps to  
2 determine that?

3 A. To see where the calls actually originated from  
4 or whether they originated from companies that portions  
5 of their business were inter exchange carriers.

6 Q. To -- what I'm -- what I'm asking you is --  
7 ultimately what I'd like to know is whether you've  
8 taken any steps to determine whether -- to determine  
9 the amount -- the amount of traffic that Transcom  
10 carriers that is of the -- of the sort that I describe  
11 at the beginning; made with an ordinary hand set,  
12 delivered to -- attached to public switch telephone  
13 network and terminated on. That sort of hand set.

14 A. Could we serve a customer as to what type of  
15 traffic they were sending us?

16 Q. Yes.

17 A. Is that the question?

18 Q. Correct.

19 A. I suppose we could.

20 Q. But you -- have you done that?

21 A. No.

22 Q. Have you taken any other steps to determine how  
23 much traffic Transcom carriers is of the sort I've  
24 described?

25 A. No.

1 and terminates on the PSTN?

2 A. Yes.

3 Q. So AT&T has raised this dispute and threatened  
4 to suspend service. Transcom has sought injunctive  
5 relief. They don't get that. AT&T has suspended  
6 service. Transcom has then filed bankruptcy. Transcom  
7 has also been the subject of a dispute over this same  
8 issue. Yet, in all of this you never took a single  
9 step to determine how much of your traffic is of this  
10 nature?

11 A. In the nature of the traffic as far as relative  
12 to the form is not germane. What is germane is the  
13 content and the change in content and our statuses in  
14 the SP. It doesn't matter where that traffic comes  
15 from or where it terminates.

16 Q. Okay. Can you answer the question, please?

17 A. I thought I did just answer the question.

18 Q. Okay. The question called for a yes or no  
19 answer. In the wake of all of that litigation, did  
20 Transcom ever take a single step to determine how much  
21 traffic is of the nature raised in these disputes?

22 A. No.

23 Q. Isn't that because the vast majority of the  
24 traffic is of that nature?

25 A. I don't know the answer to that question.

1 on?

2 A. Based on discussions I've had with my chief  
3 technology officer.

4 Q. Okay. And his -- what is his name?

5 A. Chad Frazier.

6 Q. Okay. And is he going to be -- to your  
7 knowledge, is he going to be testifying in this  
8 proceeding?

9 A. That's -- that's my understanding.

10 Q. Okay. We also discussed yesterday whether you  
11 have any knowledge regarding what ordinary wire line  
12 telephone companies such as SBC do to calls to enhance  
13 signal clarity and to make them more efficient  
14 transmission, and you testified that you don't have  
15 knowledge of -- of the steps those carriers take; is  
16 that correct?

17 A. That's correct.

18 Q. Okay. Now, yesterday you described end user  
19 customers, and I'm talking still about phone to phone  
20 IP telephony. Calls that originate on the PSTN and  
21 terminate on the PSTN. You described that the  
22 individuals who make the call is the ultimate  
23 beneficiaries that -- of those calls. Do you remember  
24 making that statement?

25 A. Yes.

1 Q. Okay. Does Transcom pick and choose among  
2 those ultimate beneficiaries? Does it -- does it  
3 decide whether to carry on individual's call versus  
4 another individual's call?

5 A. No.

6 Q. Is -- is it correct to say that Transcom  
7 contracts with other carriers including inter exchange  
8 carriers that we've sort of described and processes  
9 what those carriers give it?

10 A. Yes.

11 Q. Okay. So in terms of the calls you carry, as  
12 far as you're concerned -- let me rephrase that. In  
13 terms of the calls that Transcom carries, as far as  
14 you're concerned they could be from anyone; is that  
15 correct?

16 A. That is correct.

17 Q. One other point. You testified yesterday --  
18 yesterday in response to questioning from Mr. Kohn that  
19 your understanding on why Transcom was an enhanced  
20 service provider even when it's providing this phone to  
21 phone IP telephony is based on your understanding of  
22 what the FCC has said about the definition of an  
23 enhanced service; is that correct?

24 A. It's the definition of enhanced service  
25 provider as a changed person. A company that changes

1 the form or content of the call.

2 Q. Okay. Are there any specific FCC statements  
3 you have in mind?

4 A. Not that I recall.

5 Q. Not that I recall. So it's basically that --  
6 that the change in form and content, it's an enhanced  
7 service; is that correct?

8 A. If it changes content, yes.

9 Q. If it changes content, okay. But not  
10 necessarily in form. It wouldn't have to change in  
11 form. Just the content?

12 A. In our case some calls, yes, just change the  
13 content --

14 Q. Okay.

15 A. -- would be sufficient.

16 Q. Are you familiar with FCC statements to the  
17 effect that a service is not considered enhanced if it  
18 does not alter the fundamental character of telephone  
19 service?

20 A. No, I'm not familiar with that.

21 Q. When the dispute between AT&T and SBC -- I'm  
22 sorry -- between Transcom and AT&T arose and then when  
23 Transcom entered -- entered Chapter 11, did Transcom  
24 contact SBC to discuss any possible leads in which it  
25 could interconnect directly and deliver phone to phone



1 testimony, who does the TDM conversation?

2 A. That would be the first switch at SBC.

3 Q. Okay. But if the conversion from the wave  
4 format to a digital format -- I'll just represent that  
5 as 1/0, right? You've got the wave being converted to  
6 TDM digital format by SBC; is that correct?

7 A. (Inaudible).

8 Q. Okay. In digital formate let's assume that  
9 it's sent to Transcom. Someone in here sends it to  
10 Transcom, and here's the -- and I've got a circle here  
11 so you can find Transcom, okay. And is it at this  
12 point that it's packetized?

13 A. Yes. If it's coming in over a TDM, it would be  
14 packetized by their media gateway.

15 Q. Okay. So I'm going to -- I'll try my best to  
16 turn it into a couple of different -- so you take --  
17 basically we're taking the digital bits at the media  
18 gateway and putting it into these little rail cars, if  
19 you would. It's little packets. And then they're  
20 transported, and this may not -- we'll get to this.  
21 This may -- they are transported from the media gateway  
22 here to the media gateway here; is that right?

23 A. That's correct. Over a IP network.

24 Q. Over a IP network. So the line may or may not  
25 be here. It may -- may go in various directions. The

1 main idea is to get it -- get the -- get these little  
2 old rail cars, attached to one another or not, and get  
3 them where they need to be; is that correct?

4 A. Correct. Or to an egress point.

5 Q. To an egress point. Did -- if the call is  
6 going to an SBC customer in Houston, it's going to have  
7 to go through a media gateway on egress point as well;  
8 isn't that correct?

9 A. It would but it could be Transcom's customer.  
10 It doesn't have to go through their egress -- their  
11 media gateway. It's --

12 Q. Oh, I see. It could -- it could be a media  
13 gateway operated by somebody else?

14 A. I could -- I could do pure voice over IP.

15 Q. Okay. I'm -- I'm talking about an ordinary  
16 telephone customer, SBC customer connected to the PSTN,  
17 not -- no broad band connection here, no broad band  
18 connection here. Just an ordinary customer with narrow  
19 band dial-up --

20 A. So I'd go --

21 Q. -- top of the line service. So it's going to  
22 have to hit a media gateway?

23 A. That's correct.

24 Q. Is that correct?

25 A. That's correct.



1 Q. Now, the -- the -- the packetizing of the  
2 call -- so we know that the call has converted by  
3 digital format by SBC. It is delivered by whoever,  
4 Transcom, and they packetize it, correct, and then it's  
5 from this end --

6 A. Right.

7 Q. -- that we're turning it back into 1/0 and then  
8 delivered to SBC?

9 A. That's correct.

10 Q. Okay. And SBC then does the conversion from  
11 digital to analog format; is that correct?

12 A. That's correct.

13 Q. Okay. So SBC isn't doing anything different on  
14 this end of the call or on this end of the call when  
15 the call is routed to Transcom then it does when the  
16 call is routed to somebody else?

17 A. That's correct.

18 Q. Okay. Now, I want to talk a little bit about  
19 the -- the packet loss that was discussed. Now, I  
20 think you said any IP transmission is going to involve  
21 turning these digital bits into packets and putting  
22 them over a packet matter; is that correct?

23 A. That's correct.

24 Q. Okay. The packet loss that occurred between  
25 here and here, okay, meant this media gateway attempts

1 to fix in one of the three ways you discussed with  
2 Mr. Kohn. Now, that happens only because it being  
3 transmitted over an IP network; isn't that correct?

4 A. That's correct.

5 Q. So there's no -- so the steps that media  
6 gateway has to take in terms of inserting zeros, taking  
7 in a new number, whatever it's doing, it's only doing  
8 because of packet loss that is incidental to IP base  
9 transmissions; isn't that correct?

10 A. That's correct.

11 Q. So that's what would never have to be taken if  
12 the call was simply handled in the ordinary course and  
13 not packetized at all?

14 A. That's correct.

15 Q. So -- so any deterioration in call quality that  
16 comes from packet loss is a result of packetizing the  
17 call in the first place; isn't that correct?

18 A. That's correct.

19 Q. Okay. So the new content that you testified is  
20 put into this call is only to replace the content that  
21 we've lost in here; isn't that correct?

22 A. That's correct.

23 Q. Okay. And the goal, as I understand it, of  
24 putting the new content in it is to make it more  
25 palatable to the human ear; is that correct?

1 A. That's correct.

2 Q. Is there any other goal to putting that new  
3 content in there?

4 A. That's the major goal.

5 Q. Is there any other goal?

6 A. Huh?

7 Q. Is there any other goal? Is there any other  
8 reason you would -- you would add those numbers into  
9 the call at this end?

10 A. No.

11 Q. I'm sorry? I --

12 A. No.

13 Q. There is none, okay. In terms of the -- the  
14 variety of the media gateway that Transcom uses -- now,  
15 you testified that you're not aware of anybody else  
16 using that same gateway?

17 A. I haven't investigated it, no.

18 Q. Okay. How many -- how many IP telephony  
19 providers are there right now; do you know?

20 A. There is -- I don't know the exact number, but  
21 there are a number.

22 Q. Like dozens?

23 A. Probably more.

24 Q. Probably more, okay. And you haven't actually  
25 looked at any of the equipment they're doing to

**CERTIFICATE OF SERVICE**

I hereby certify that on this 22nd day of September 2005, the foregoing Corrected Version of the Petition for Declaratory Ruling was served on the individuals listed below by first-class mail.

  
Bernadette Murphy

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